

RESPONSE TO REQUEST
FOR ADDITIONAL REVIEW

COMPETITIVE BIDDING OF CONTRACTS
RUNWAY CONCRETE REPLACEMENT CONTRACT
DETROIT METROPOLITAN WAYNE COUNTY AIRPORT

PREPARED FOR
THE DETROIT METRO AIRPORT REVIEW COMMITTEE

July 20, 2001

The Honorable Glenn D. Steil
Michigan Senate
Chair, Detroit Metro Airport Review Committee
1020 Farnum Building
Lansing, Michigan

Dear Senator Steil:

This special report is in response to the June 6, 2000 letter from the Joint Legislative Select Committee on the Wayne County Detroit Metropolitan Airport requesting a more detailed review of the Detroit Metropolitan Wayne County Airport. This special report contains our responses to questions in the general issue area of competitive bidding of contracts related to the Airport's runway concrete replacement contract.

Specifically, the Joint Legislative Select Committee asked us to determine the extent to which Wayne County Field Engineering's concerns regarding American International's prior performance were taken into consideration in awarding this contract and whether American International's performance under this contract was acceptable to the Capital Improvement Program (CIP) program manager and Wayne County Field Engineering. The Joint Legislative Select Committee also asked us to determine and analyze why portions of this contract were eliminated, whether Wayne County ordinances require the Wayne County Commission to approve this contract, and whether the contract was approved in compliance with these ordinances. Finally, the Joint Legislative Select Committee asked us to review and comment upon the Airport's failure to provide documentation indicating that its advertisements for bids on this contract were published.

Our procedures were of limited scope. Therefore, our review should not be considered an audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

We are available to present this special report to the Detroit Metro Airport Review Committee upon request. If this is the Committee's desire or if you have any questions or concerns regarding this review, please contact me.

Sincerely,

Thomas H. McTavish, C.P.A.
Auditor General

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** All exhibits of the Wayne County Detroit Metropolitan Airport Preliminary Review Reports are available by contacting the Office of the Auditor General in writing and specifying the exact exhibits that you would like to receive. Your written request, with your name and address, must be sent to: The Office of the Auditor General, 201 N. Washington Square, 6th Floor, Lansing, Michigan, 48913.*

OVERVIEW OF THE RUNWAY CONCRETE REPLACEMENT CONTRACT

The runway concrete replacement contract was to provide for the replacement of concrete at the touchdown zone of Runway 21R. The Detroit Metropolitan Wayne County Airport awarded the contract to American International, Inc. (American International), on May 5, 1997, with a notice-to-proceed effective date of May 17, 1997. The contract was funded by Series 1986 Airport revenue bonds and charged against the Renewal and Replacement Fund of the subject bond issue.

The Airport received the following bids for the project:

Contractor	Base Bid	Corrected Bid
American International	\$440,998	\$443,998
Posen Construction, Inc.	\$449,024	
Angelo Iafrate Construction	\$476,790	
John Carlo, Inc.	\$478,961	
Tony Angelo	\$496,794	
Peter A. Basile & Sons, Inc.	\$515,557	
Ajax Paving Industries	\$584,342	

Because the bids received exceeded the planning budget for this project, the Airport's Capital Improvement Program (CIP) program manager recommended deleting work for miscellaneous pavement marking removal, thereby eliminating work estimated to cost approximately \$125,000.

SCOPE OF REVIEW

Our procedures were of limited scope. Therefore, our review should not be considered an audit in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

We reviewed documentation associated with this contract and with the associated change orders. We interviewed personnel familiar with this project.

COMMENTS

Request:

Please determine the extent to which Wayne County Field Engineering's concerns regarding American International's prior performance were taken into consideration in awarding this contract. Also, confirm whether the awarding of the contract to American International and its subsequent performance of the work required under the contract were acceptable to the CIP program manager and Wayne County Field Engineering.

Procedure:

We interviewed personnel from the Airport, Wayne County Field Engineering, and the Airport's CIP program manager. We also examined documentation contained in the project file for this contract.

Comment:

During our review of the airfield lighting and signage project files, we observed numerous disputes and concerns related to American International's performance. The concerns were summarized in an April 28, 1997 memorandum from Wayne County Field Engineering to the Airport's CIP program manager (see Exhibit A).

The April 28, 1997 Wayne County Field Engineering memorandum recommends that American International not be awarded the subsequent contract for runway concrete replacement, based on American International's previous performance on the airfield lighting and signage project. A draft letter of recommendation was prepared by the CIP program manager the following day, agreeing with Wayne County Field Engineering in recommending that American International not be awarded the contract, based on past experience (see Exhibit B). Specific reasons cited in the CIP program manager's draft letter of recommendation for not awarding the contract to American International included:

- 1) This contractor is confrontational and very hard to work with. Our experience concerning correspondence, progress meetings, field/site coordination and behavior has been less than professional.
- 2) This project is very schedule sensitive. American International has shown they have problems developing and meeting their own schedules on airfield work.

- 3) This contractor does not have any recent large paving experience, especially in schedule sensitive areas in the secured areas of the airport.
- 4) This contractor has shown an inability to perform and conduct work with[in] the AOA [airfield operational area] in a manner that is efficient, responsive, timely and takes in to account the nature of the work site rules and regulations, inside an active airport.
- 5) Our experience with the Williams Corporation, a subcontractor to American International, has been less than satisfactory, and American International is going to use Williams to perform concrete work, which is the critical element of work on this project.

The draft letter of recommendation advised the Airport to award the contract to Posen Construction, Inc. (the next lowest bidder), noting that the difference between Posen's bid and American International's bid was only \$5,036 (1.13% higher).

The draft letter of recommendation was sent to the Wayne County Deputy Chief Operating Officer (formerly titled Wayne County Assistant CEO/Airport and Major County Construction), who oversaw Airport construction, for his review and approval. The CIP program manager's notes on file indicate that the Deputy Chief Operating Officer directed the CIP program manager to change its recommendation to recommend award of the contract to American International as low bidder "except under extreme circumstances" (see Exhibit C).

On May 1, 1997, the CIP program manager officially sent its "revised" letter of recommendation to the Deputy Chief Operating Officer (see Exhibit D). Changes made to the draft letter included:

1. American International was recommended for the contract award.
2. All reference to the 5 preceding reasons for not awarding to American International were replaced with conditions designed to address the concerns expressed in the draft letter of recommendation.

One of the conditions in the revised letter of recommendation was that American International must assign a superintendent and a project manager acceptable to the CIP program manager and Wayne County Field Engineering. In an award letter dated May 5, 1997, the Deputy Chief Operating Officer awarded the contract to American

International subject to this condition (see Exhibit E). Documentation showed that the superintendent and the project manager subsequently assigned to this project were the same two individuals whom Wayne County Field Engineering and the CIP program manager had disputes and concerns with during the previous airfield lighting and signage project.

Based on our review, it appeared that the superintendent and the project manager assigned to the project were not acceptable to Wayne County Field Engineering or the CIP program manager.

For example, during an interview, representatives from Wayne County Field Engineering stood by their original April 28, 1997 recommendation indicating that the contractor's superintendent and project manager would not have been acceptable had the decision been theirs. After the contract award, Wayne County Field Engineering again expressed concerns with the contractor's lack of experience and unacceptability, in notes responding to a May 9, 1997 letter from the contractor's assigned project manager. The notes stated:

[The] contractor has shown by this letter that he has no idea what concrete paving is about. [He] does not know what a key way is for or how [it is] made. [He] does not know how to cure concrete, which methods are superior, or how long it takes to gain strength.

Similarly, it did not appear that the CIP program manager found American International or its superintendent and project manager acceptable. On May 14, 1997, three days before American International began work on the project, the CIP program manager sent a letter to the Deputy Chief Operating Officer, stating:

Attached is a current letter from A.I. [American International] . . . concerning referenced project. The letter is causing us and Field Eng[ineering] some concern since it seems to indicate that the contractor is not well versed on concrete paving, does not know what a 'key way' is or how it is made, does not know how to cure concrete, which methods are best, or how long it takes to achieve 'strength.' This is not a good sign.

Ultimately, the work provided for under the contract was not completed on time because, in the words of Wayne County Field Engineering, the contractor:

. . . did not put forth the effort, sufficient manpower, or equipment, to place the concrete early enough in the project or take any action to provide for an

accelerated or enhanced mix to attain the contracted compressive strength by the end of the 10th day.

Although concrete strengths were not deemed acceptable by the contracted completion date, Wayne County Field Engineering tests later deemed concrete compressive strengths acceptable, after allowing sufficient additional time for concrete cure.

In response to our request asking whether the CIP program manager found American International's superintendent and project manager acceptable (see Exhibit F-1), a representative from the CIP program manager responded only that the names of the superintendent and project manager were submitted to the CIP program manager, but not whether they were acceptable (see Exhibit F-2). In response to this incomplete response, we again asked whether the CIP program manager approved of the contractor's superintendent and project manager (see Exhibit F-3). Another representative from the CIP program manager responded to this second request, indicating only that the CIP program manager "accepted" the contractor's project manager (see Exhibit F-4).

Airport Response:

The following represents a chronological order of events, as it relates to the award of the runway concrete replacement contract:

1. The April 28, 1997 letter from Wayne County Field Engineering to the Airport's CIP program manager represented a strained working relationship among Field Engineering and the contractor. The difficult working relationship may have been based upon (1) a conflict in personalities; (2) American International's difficulties in meeting schedules on airfield work (of course, if this was a standard for not awarding contracts, every contractor who missed a scheduled date, at both the local and state level of government, would be barred); (3) American International has no recent paving experience in schedule sensitive areas or in secured areas of the Airport (however, paving is paving and because the contractor has not paved in the exact area as expressed in the bid is not a valid reason to disqualify a bidder that has equable experience in other areas); (4) American International did not efficiently do the airfield lighting and signage contract (a statement of this magnitude would require debarment proceedings, which requires a lengthy due process procedure); and (5) American International subcontractor Williams Corporation does less than satisfactory work (the subcontractor listed cannot be

the basis for not awarding a contract; the subcontractor can always be replaced, which was what was required on this contract).

2. The April 29, 1997 letter from the Airport's CIP program manager was a draft letter to the County's Deputy Chief Operating Officer trying to convince him not to award a low bid contract to American International. The basis for the request not to award the contract to American International was based primarily upon previous work experience with specific individuals employed by the contractor, as well as a few other mitigating factors. As mentioned previously, in order for the County to not award a contract to the lowest bidder, the contractor must be disbarred.

From a legal standpoint, there should be a good and compelling reason for not awarding a contract to the lowest bidder. A reason based upon a prior contract, which was completed and accepted, does not provide the basis to disqualify a low bidder. A debarment proceeding with due process protection for the contractor would be required. Contractors have a right to due process regardless of the opinion of Field Engineering personnel.

The draft letter prepared by the Airport's CIP program manager was reviewed by the County's Deputy Chief Operating Officer, who revised the letter to require award to the lowest bidder saying that the bid must be awarded to the low bid except under extreme circumstances. This revision was based upon direct legal advice from the Airport's General Counsel.

3. The May 1, 1997 letter from the Airport's CIP program manager to the County's Deputy Chief Operating Officer was a revised recommendation for the award of the contract to American International, with the exception of a few personnel items. To address Field Engineering's and the CIP program manager's concerns, the contractor was required to reassign personnel. The contractor's field side personnel of the project were reassigned to the office side of the project. This rearrangement of the contractor's personnel addressed both Field Engineering's and the Airport's CIP program manager's concerns regarding this contractor. Field Engineering has stated that, since the contractor met its concerns, there no longer was an objection to the award and a specific writing of such was not necessary. Furthermore, American International's intentions to comply with the personnel requests would be represented in its actions.

Epilogue:

The April 28, 1997 letter from Wayne County Field Engineering described more than merely "a strained working relationship" or "conflict in personalities." The letter outlined the contractor's difficulties in meeting time schedules, poor planning, lack of experience, safety violations within the airfield operational area, and insufficient equipment and personnel, all which contributed to delays and cost escalations on the previous airfield lighting and signage contract. It is questionable whether these deficiencies should be tolerated on a project of such a critical nature as the Runway 21R touchdown zone concrete replacement project.

Similarly, the CIP program manager's April 29, 1997 letter was based on more than "previous work experience with specific individuals employed by the contractor." The CIP program manager outlined in detail the scheduling difficulties, lack of experience, inefficiencies, untimeliness, and other concerns that it had with the contractor.

Awarding the contract contrary to the advice of Wayne County Field Engineering personnel and the Airport's contracted construction management firm is remarkable considering the Airport's response, which reflects:

- a. Acceptance of a contractor that displayed chronic scheduling difficulties under the airfield lighting and signage contract.
- b. Tolerance of a contractor that lacked specialized experience because "paving is paving."
- c. Dismissal of the prospect of awarding the contract to the next lowest qualified bidder because to do so would have required a "lengthy" due process procedure.
- d. Refusal to reject a bid that included a subcontractor whose work had previously been found less than satisfactory, even when the subcontractor was to perform the critical element of the work (concrete) on the project.

The Airport's response makes reference to the "lengthy due process procedure" involved in "debarment proceedings." Debarment of the contractor was not the only alternative available to the Airport. The runway concrete replacement contract itself provided for the disqualification of bidders and the rejection of bids. Specifically, the "Instruction to Bidders" contained in the published "Advertisement for Bids," which was

also contained as Section 1.17 of the runway concrete replacement contract, "Disqualification of Bidders," states in pertinent part:

Any one or more of the following causes may be considered sufficient for the disqualification of a bidder and the rejection of his bid or bids:

. . . .

2. Lack of competency as revealed by either financial, experience, or plant equipment statements as submitted.

. . . .

3. Lack of responsibility as shown by past work, judged from the standpoint of workmanship and progress.

. . . .

7. An insufficient percentage of self performed work, as required by Section 00700 'General Conditions', or Section 00800 "Supplementary Provisions'.

Furthermore, the documentation did not show that the Airport required the contractor to reassign personnel. To the contrary, the project files showed that the contractor's same superintendent and project manager who were the source of Field Engineering's and the CIP program manager's concerns were again assigned to the runway concrete replacement project in the same capacity. Correspondence contained in the project files also showed that the contractor's superintendent and project manager were present in the field, not just as office personnel as the Airport's response suggests. For example, in one letter, the contractor's project manager claimed that he had been "present on the job site while every cubic yard of concrete for this project was placed," and that the contractor's superintendent had likewise been present on the jobsite during all but "about three (3) hours at the end of the first day"

Procedure:

We examined evidence pertaining to the contractor's performance on this contract to determine whether it was completed satisfactorily and on time as low bid.

Comment:

The concrete replacement work was acceptable once completed. However, the project was not completed within 10 calendar days as required under the contract and no liquidated damages were assessed.

As described by the Airport's CIP program manager's notice-to-proceed letter, effective May 17, 1997 (see Exhibit G), it was imperative that American International complete the contract in all respects, including concrete cure, within 10 calendar days (by 11:59 p.m. on May 26, 1997). The contract provided for liquidated damages of \$5,000 per day beyond the allotted 10-day contract period.

On November 6, 1997 and again on December 12, 1997, American International's project manager signed and certified to Wayne County Field Engineering a work completion date of May 28, 1997, which was 2 days beyond the planned completion date of May 26, 1997. Wayne County Field Engineering and the CIP program manager signed in concurrence with the May 28, 1997 work completion date.

In an August 6, 1997 memorandum to the CIP program manager (see Exhibit H), Wayne County Field Engineering stated that the contract was not completed until May 28, 1997, 2 days beyond the contracted completion date. Wayne County Field Engineering's memorandum also recommended that liquidated damages be assessed against the contractor, stating:

We have not been presented any compelling reasoning that would justify an extension of contract time. Concrete strengths were the determining factor in the opening to aircraft. The contractor was well aware of the requirements, and did not put forth the effort, sufficient manpower, or equipment, to place the concrete early enough in the project or take any action to provide for an accelerated or enhanced mix to attain the contracted compressive strength by the end of the 10th day.

Eight months later, in an April 7, 1998 Project Fact Sheet approved by the same Wayne County Field Engineering representative who wrote the August 6, 1997 memorandum, Wayne County Field Engineering subsequently changed its completion date by 2 days (from May 28, 1997 to May 26, 1997), making American International's contract completion date within the contractually required contract time (see Exhibit I).

We asked Wayne County Field Engineering to explain the contradictory completion dates. Wayne County Field Engineering could not explain the difference in completion dates between the two documents.

Airport Response:

As stated in the contract, the project was to be completed in 10 days. In accordance with the written contract, the project was completed in 10 days as required. Since the contract was completed within the 10-day period, no liquidated damages can be collected.

The CIP program manager's notice-to-proceed letter, effective May 17, 1997, cannot and does not modify or change the written contract between the parties. The contract does not provide that the concrete cure within the 10-day contractual period.

There is a provision in the contract for the Wayne County engineer in charge of the project not to allow aircraft to use the concrete until the concrete hardens to a certain strength. The engineer decided to wait until the concrete reached a certain strength, which took 30 hours.

The contract specifications provide that the engineer shall decide when the aircraft can use the new pavement.

Furthermore, there is no provision in the contract that requires the concrete to reach a specific strength before the construction is deemed complete.

Epilogue:

The written contract did require the work be "completed" within 10 calendar days, including concrete cure. Section 1.22 of the contract, "Time For Completing The Contract," required that "[t]he work, including the final cleaning up, shall be completed on or before the date or dates specified in the contract."

Section 1.53 of the contract, "Liquidated Damages," required:

[T]he work . . . shall be completed within **ten (10)** consecutive calendar days [and i]f the Contractor fails to attain substantial completion of the work allowing Beneficial Occupancy by the Owner, within the contract time or extension thereof generated by the County, the Contractor is in default

The completion of work included under this Contract is defined, for purposes of determining liquidated damages, as the date of Substantial Completion as defined in the General Provisions.

Section 1.02 of the General Provisions of the contract, "Definitions," defines "Substantial Completion" as:

The stage in the progress of the work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use.

The "work" under the contract was to replace concrete at the touchdown zone of Runway 21R. Wayne County Field Engineering determined that the concrete had not cured to a sufficient strength to allow the landing of aircraft by May 26, 1997 (10 consecutive days). Because the "intended use" of the touchdown zone of Runway 21R was the landing of aircraft and the Owner could not occupy or utilize the work for that "intended use" within 10 consecutive calendar days, the contractor did not complete the work within the contractually specified time.

Request:

Please determine the causes and analyze the circumstances regarding why portions of this contract were eliminated.

Procedure:

We examined the project files and interviewed and/or submitted written queries to the Airport, Wayne County Field Engineering, and CIP program manager personnel.

Comment:

According to American International's itemized bid sheet, the runway concrete replacement project contained 9 unique items that were bid (see Exhibit J). The portion of the contract eliminated called for the removal of 138,900 square feet of runway pavement marking. At a bid unit cost of \$1.12 per square foot, \$155,568 (35%) of the \$443,988 contract should have been eliminated. However, Change Order No. 1, which officially eliminated this item (see Exhibit K), was for a lesser amount, in part because increases in quantities and corresponding costs of other items were also included in the change order.

In its May 1, 1997 letter of recommendation (Exhibit D), the CIP program manager advised:

The project construction estimate at bid time was \$271,000.00.

. . . .

Since the bids received exceed the planning budget for this project, the Project Manager recommends deleting the work for miscellaneous pavement marking removal, thereby saving approximately \$125,000.

In the May 5, 1997 award letter (Exhibit E), the Deputy Chief Operating Officer advised the contractor that bid item #M6310180 (Removing Pavement Marking) would be eliminated by change order "due to budget constraints and airfield activity."

According to the contract's bid specifications (Exhibit J), only 8,397 square feet of runway pavement was to be removed (item M2070002) and replaced with 7,200 square feet of concrete pavement (item M4501010). However, a total of 138,900 square feet of pavement marking was scheduled to be removed (item M6310180), as well as 157,050 square feet of new pavement marking (items M6310185 and M6310187).

In seeking an explanation for the extra volume of pavement marking removal and new pavement marking, relative to the volume of new pavement installed, we determined that the bid item "Removing Pavement Marking" included pavement marking removal on other Airport runways and locations, unrelated to the paving of Runway 21R. Later, after receiving bids that exceeded the planning budget for the project, the Airport decided that only paint removal work associated with existing and temporary markings for Runway 21R would be completed. In the May 5, 1997 award letter, the Deputy Chief Operating Officer notified American International of the Airport's intent to eliminate the item "Removing Pavement Marking." Wayne County Field Engineering stated that the bid plans had listed this item as a "contingency item" and that the possible deletion of this item was discussed at the pre-bid meeting.

By eliminating the pavement marking removal item in its entirety, it became necessary for the Airport to add 37,140 square feet of "Pavement Marking, Black" (see Exhibit K, Change Order No. 1).

Despite the Airport's deletion of this pavement marking removal "contingency item," the contractor made a claim for an additional \$9,632 for what the contractor described as its

distribution of "overhead" costs attributed to the pavement marking removal "contingency item." Although the CIP program manager stated that "distribution of . . . overhead cost on the entire item was a business decision made by AI [American International] in spite of reasons to the contrary," ultimately, the contractor successfully negotiated a lump sum "extra" of \$2,331 (see Exhibit K, Change Order No. 2) as compensation for "unrealized overhead costs as a result of deleting the non-contingency portion of the item." Although the entire 138,900 square feet of pavement marking removal was eliminated from the contract, Change Order No. 2 indicates that only 105,300 square feet was included as a "contingency item" and that "subsequent to the award of the contract, the Airport Authority chose to delete the entire item." This is contradicted by Wayne County's May 5, 1997 award letter to the contractor (Exhibit E), which shows that bid item #M6310180 (Removing Pavement Marking) was deleted contemporaneously with the contract award.

Similarly, on June 11, 1997, the CIP program manager remarked on the prospect of this extra compensation:

Removing Pavement Markings - Prior to award of contract, AI [American International] was clearly informed of this deletion verbally and by letters dated May 5, 1997 from Mr. Kelley, Deputy CEO of Wayne County, and dated May 12, 1997 by Mr. Hypnar, Project Director of the Project Managers office. At no time did AI take any exception and/or request adjustment due to this.

The contract was written and signed by both parties under full understanding that the deletion of this item is included as a condition of the contract. Claiming of extra compensation, after the fact, denies the Owner [the Airport] other options available at that time.

Because 33,600 of the 138,900 square feet of pavement marking removal was accepted as a "non-contingency" and, although the work was not performed because it was eliminated, the contractor's argument was accepted, and an overhead cost of \$2,331 was attached for the non-contingency portion of the eliminated item and paid to American International.

Request:

The Office of the Auditor General's Preliminary Review of Competitive Bidding of Contracts, Detroit Metropolitan Wayne County Airport, indicates that the Wayne County Commission did not approve this contract, but the Airport argues that Commission approval is not required. The Airport bases its argument on two

ordinances (84-143 and 99-497), one of which was not adopted until 2 years after this contract was executed. Please determine whether County ordinances require the Commission to approve this contract, and whether the contract was approved in compliance with these ordinances.

Procedure:

We reviewed provisions of the County Contracting and Appropriations Ordinances applicable to Commission approval requirements of CIP construction contracts and change orders and evaluated whether the contract was properly executed in compliance with such requirements.

Comment:

There was no Wayne County Commission resolution approving this contract or its change orders. As described on page 68 of our special report entitled Preliminary Review of Competitive Bidding of Contracts, Detroit Metropolitan Wayne County Airport, the Airport contended that the runway concrete replacement contract with American International did not have a Commission resolution approving it because it fell under "delegated authority" by the Wayne County Commission to the Director of Airports for CIP projects.

In support of its assertion, the Airport cited Section 8 of the Wayne County Contracting Ordinance (84-143) and Section 41(F) of the Wayne County Appropriations Ordinance (99-497). The Airport stated then that these ordinances authorize the County Executive to implement projects within an annual Capital Outlay Plan approved by the Wayne County Commission. The Airport indicated that this project was included in an annual Capital Outlay Plan approved by the Wayne County Commission.

Notwithstanding the Airport's statements regarding "delegated authority," our review of the County's Contracting and Appropriations Ordinances applicable to Commission approval disclosed:

a. Contracting Ordinance - Contract Approval

Section 1(E) of Contracting Ordinance 84-143 states that the authority to approve and execute contracts in excess of \$50,000 for construction, reconstruction, renovation, or other improvement of County property, property under the

jurisdiction of the county, or right of way is not delegated by the Commission to the County Executive. However, Section 8 of this ordinance provides:

1. The County Executive shall submit to the County Commission, as part of the comprehensive budget, an annual Capital Outlay Plan for approval.
2. Notwithstanding the provisions of Section 1(E) of the ordinance, the County Executive may execute contracts in accordance with Section 2 of the ordinance (delegated authority) for construction, reconstruction, and renovation projects which are contained in the annual Capital Outlay Plan.

We determined that the runway concrete replacement project was not contained in the annual Capital Outlay Plan. Therefore, delegated authority to implement this contract was not obtained under Section 8 of the Contracting Ordinance, and the required County Commission approval of the contract did not occur.

b. Appropriations Ordinance - Contract Approval

Although the Airport cited Appropriations Ordinance 99-497, it was actually Appropriations Ordinance 96-656 that applied to this May 6, 1997 contract. Both Appropriations Ordinances contained similar Budget Execution Instructions.

Section 47(F) of Appropriations Ordinance 96-656 requires that, notwithstanding any provision of the Contracting Ordinance, being ordinance 84-143, or ordinance to the contrary, the County Executive is authorized to execute contracts in excess of \$20,000 to implement a project in the approved Capital Outlay Plan, if and only if all of the following additional conditions have been satisfied:

1. The work has been advertised and the invitation for bids has been sent to at least five vendors, but if there are less than five vendors, then to all known vendors who are known to be competent and available to do the work.
2. Bidders are given a reasonable amount of time to respond.
3. The bids are received on time as sealed with a publicly witnessed opening.
4. The contract is awarded to the lowest responsible bidder.

However, Section 47(C) of the same ordinance also states that the County Executive shall present to the County Commission for prior approval all contracts in excess of \$50,000.

This contract had a "corrected bid" price of \$443,988 and an adjusted contract amount of \$311,576, either of which was well in excess of the Section 47(C) \$50,000 requirement. Under the Appropriations Ordinance, Commission approval was required. The contract was not approved in compliance with Appropriations Ordinance 96-656.

Airport Response:

The Office of the Auditor General's draft preliminary review report, subsequently issued March 16, 2000, prompted a question as to what projects were on the approved CIP list. The Airport reviewed all projects and found that there were five projects that were inadvertently excluded from the approved list. However, all of these projects were bid, advertised, and awarded to the lowest bidder with all parties signing off and reporting on the contractor's progress to the Wayne County Commission. These projects were processed in the same manner as the other CIP projects that were included in the 5-Year Capital Project List.

The Airport has reconciled its CIP projects with those of the Commission, and in Commission Resolution No. 2001-125, the 5-Year Capital Project List was ratified to include these five projects (see Exhibit L).

Epilogue:

The Airport's belated efforts to obtain retroactive authorization of this contract through Commission Resolution No. 2001-125 did not alter the status of compliance with County ordinances. Section 3.115 of the Wayne County Charter vests the power to approve the making of all contracts with the Wayne County Commission. Although the Commission has delegated to the County Executive certain of its powers to "approve and execute contracts or contract amendments to purchase goods and services" in Contracting Ordinance 84-143 (as amended), the Commission has qualified this delegation of authority to those contracts contained in the annual Capital Outlay Plan. Furthermore, pursuant to the Appropriations Ordinance, the Commission has also retained and required its express approval prior to the execution of a contract or the payment of public funds on all contracts in excess of \$50,000.

The Airport did not comply with the Contracting Ordinance or the Appropriations Ordinance at the time that the contract was executed or when public funds were used to pay the contractor. The fact that the Airport has successfully petitioned the Wayne County Commission to retroactively "ratify" a contract that has already been executed, completed, and paid for without proper authorization does not change the noncompliance status at the time that the contract was awarded.

Request:

The preliminary review report indicates that the Airport failed to provide documentation indicating that its advertisements for bids on this contract were published. Please review and comment upon the Airport's failure to provide these records.

Procedure:

We again requested from the Airport proof of advertising for the runway concrete replacement project.

Comment:

In response to our repeated request that the Airport provide proof that advertisements for bids were published, the Airport provided its purchase requisition, dated April 9, 1997, identifying the vendor as *Detroit Legal News* (see Exhibit M).

The purchase requisition requested publication of an "attached" advertisement in the Friday, April 11, 1997 edition of the *Detroit Legal News*. The purchase requisition referenced "Runway 21R Pavement Replacement." The purchase requisition required that two copies of proof of publication be furnished with the invoice. The Airport did not include the invoice or proof of publication in its response.